



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF A FILING BY )  
COMCAST BUSINESS COMMUNI- )  
CATIONS, INC. REQUESTING APPROVAL )  
OF ITS B.P.U.-N.J. - NO. 1 TARIFF TO )  
PROVIDE LOCAL EXCHANGE SERVICES )  
WITHIN THE STATE OF NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TT01040207

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated April 2, 2001, Comcast Business Communications, Inc. (Comcast or Petitioner) filed its proposed tariff, B.P.U.-N.J. - No. 1, with the Board of Public Utilities (Board) to offer local exchange telecommunications services in New Jersey. With this filing, Comcast seeks approval of its tariff to provide local exchange telecommunications services throughout the State of New Jersey. On June 27, 2001, Comcast submitted revisions to the tariff.

Comcast was previously authorized to provide local exchange and interexchange telecommunications services by the Board. See Order of Approval, I/M/O the Petition for an Order Authorizing Comcast Business Communications Inc. to Provide Local Exchange and Interexchange Telecommunications Services, BPU Docket No. TE00100789 (February 15, 2001). Comcast also filed with the Board an application for adoption of an interconnection agreement with Verizon New Jersey Inc. See Application of Verizon New Jersey Inc. and Comcast Telecommunications, Inc. of an Adoption of an Interconnection Agreement under Section 252(i) of the Telecommunications Act of 1996, Docket No. TO01010065. The tariff sought herein will allow Comcast to provide local exchange services to business customers in New Jersey, affording them additional choice in their selection of available local exchange companies.

DISCUSSION

When the Board authorized Comcast to provide local exchange services, Comcast essentially became a local exchange telecommunications company<sup>1</sup> with regard to its local exchange services. N.J.S.A. 48:2-21.17. The local exchange services for which Comcast seeks approval are subject to Title 48, and specifically, to the Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq (the 1992 Act).

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<sup>1</sup> A local exchange telecommunications company is defined to mean "a carrier authorized by the [B]oard to provide local telecommunications services." N.J.S.A. 48:2-21.17.

Thus, Comcast's local exchange services, which are asserted to be competitive according to the 1992 Act or a Board decision pursuant thereto, need only be reviewed by the Board to confirm that, in fact, they are competitive.<sup>2</sup> Once determined to be competitive, such services are not subject to regulation by the Board as to their rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return and cost of service. N.J.S.A. 48:2-21.19(a). However, the Board may require a local exchange or interexchange company to file and maintain tariffs for such competitive services. Ibid.

With regard to the services that are reflected in Comcast's tariff, the Board FINDS the following service to be competitive because it is identical to or essentially the same as services already deemed competitive, either prior to the 1992 Act, in which case they are competitive by definition pursuant to N.J.S.A. 48:2-21.17, or by Board Order pursuant to N.J.S.A. 48:2-21.19. Comcast's Business Local Connect (CBLC) Digital Trunk Service is the same as VNJ's High Capacity Service, which was approved as a Group I Service in 1987. Id. at 4, and Directory Assistance Service, which was approved as a competitive service in 1999.<sup>3</sup>

With regard to all other local exchange services for which Comcast seeks Board approval, the Board notes that such services are going to be offered for the first time by Comcast and that these new offerings are not presently covered by any existing Comcast rates, fares or charges. When the Board is prescribing rates in such situations, it is not required to find a rate base. N.J.S.A. 48:2-21.2(1)(c). These non-competitive services are: CBLC Integrated Service Digital Network (ISDN) Primary Rate Interface (PRI), Operator Service and Directory Listing.

In this petition, Comcast seeks to enter the local exchange marketplace, which is now dominated by the incumbent local exchange carrier (ILEC), VNJ. While the Board is not now making a determination that the local exchange market in New Jersey is fully competitive, the Board is convinced that it is in the public interest to encourage entry by competitors in order to increase the number of market choices available to New Jersey consumers, and to encourage the transition of this market to one which is fully competitive. This view is fully in keeping with the New Jersey Legislature's finding that competition will promote efficiency, reduce regulatory delay and foster productivity and innovation. N.J.S.A. 48:2-21.16(b)(1). This view is also consistent with that of Congress, which passed the Telecommunications Act of 1996 (codified in scattered sections of 47 U.S.C. §151 et seq.) (the 1996 Act), in order to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of those telecommunications technologies. See P.L. 104-104, 110 Stat. 56. Among the measures, which Congress incorporated into the 1996 Act to promote competition, is the provision which forbids the states from erecting barriers to entry into any intrastate telecommunications marketplace. Specifically, 47 U.S.C. §253(a) provides that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

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<sup>2</sup> The term competitive service is defined to mean "any telecommunications service determined by the [B]oard to be competitive prior to the effective date of [the 1992 Act] or determined to be competitive pursuant to sections 4 or 5 of [the 1992 Act], or any telecommunications service not regulated by the Board." N.J.S.A. 48:2-21.17.

<sup>3</sup> The Board notes that the Appellate Division recently remanded for reconsideration the Board reclassification of Verizon New Jersey, Inc.'s Directory Assistance Service in BPU Docket No. TT97120889. See I/M/O the Filing of Bell Atlantic-New Jersey, Inc. for the Reclassification of Existing Rate Regulated Services-Directory Assistance Services as Competitive Services. A-1059-99T3 (July 13, 2001).

Moreover, should a state or local government statute, regulation or legal requirement be determined by the Federal Communications Commission (FCC) to violate the 1996 Act's prohibition against barriers to entry, the FCC is empowered to preempt the enforcement of such state statute, regulation or legal requirement. 47 U.S.C. §253(d). Not only is the application of a rate base/rate of return review of this filing not required by N.J.S.A. 48:2-21.2, but such a review, and indeed, any requirement for a detailed cost justification of the rates proposed by Comcast in this filing could be perceived as the imposition of a barrier to entry. Certainly, in a local exchange marketplace environment in which Comcast has virtually no customers, and any customers which it may successfully attract may easily obtain local exchange service again from the incumbent local exchange carrier, a detailed cost justification of Comcast's local exchange service rates is not justified.

Any carrier seeking to challenge the ILEC will have to compete on several levels to attract and retain customers. With regard to price competition, the Board notes that Comcast will offer its services at rates, which it believes are competitive. These proposed rates cannot be considered unreasonable considering the competitive posture in which Comcast finds itself, and the pro-competitive policies of both federal and State law.

Therefore, after thorough review of the proposed tariffs, the Board FINDS that, as amended, Comcast's tariff, B.P.U.-N.J. - No.1, is reasonable and in accordance with law. The general terms and conditions of the proposed tariff have been reviewed by Staff, and have been modified by Comcast to bring them into conformance with the Board's customer service regulations. Accordingly, for the reasons set forth above, the Board HEREBY APPROVES in full the proposed B.P.U.-N.J. - No.1 tariff, as modified, to be effective as of the date of this Order.

DATED: 8/8/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CONNIE O. HUGHES  
ACTING PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)  
CAROL J. MURPHY  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
SECRETARY